

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (CGM) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff, Plaintiff, v. ZEPHYROS LIMITED, Defendant.	Adv. Pro. No. 12-01278 (CGM)

ORDER DENYING DEFENDANT’S MOTION TO DISMISS

Defendant Zephyros Limited (“Defendant”) filed a motion to dismiss the Amended Complaint under Bankruptcy Rule 7012(b) and Federal Rule of Civil Procedure 12(b)(6) (the “Motion”) on August 15, 2022 (ECF No. 129). The parties stipulated to rest on their papers and waive oral argument (ECF No. 139) on all aspects of the Motion other than those related to Defendant’s arguments that (i) 11 U.S.C. § 546(e) bars recovery of the bulk of the Trustee’s claims (the “Safe Harbor Issue”), and (ii) the statute of limitations bars recovery of the newly alleged transfer in the Amended Complaint (the “Statute of Limitations Issue”). The Safe

Harbor Issue and Statute of Limitations Issue came on for hearing before the Court on December 14, 2022 (the “Hearing”). Subsequent to the Hearing, the parties submitted supplemental briefing on imputation-related issues (ECF Nos. 150-51).

The Court has considered the Motion, the papers filed in support of and in opposition to the Motion (including the supplemental briefing), the Amended Complaint, and the statements of counsel at the Hearing. The Court entered a memorandum decision dated February 13, 2023 regarding the Motion (the “Decision”) (ECF No. 153). Based on the record in this adversary proceeding, including the Decision, **IT IS ORDERED:**

1. The Motion to dismiss the Amended Complaint is denied.
2. The deadline for Defendant to file an answer to the Amended Complaint is April 14, 2023.
3. The Court shall retain jurisdiction to implement or enforce this Order.

Dated: February 17, 2023
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
U.S. Bankruptcy Judge